

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. 05-00261 HG
)	
Plaintiff,)	MEMORANDUM OF LAW IN
)	SUPPORT OF MOTION
vs.)	
)	
JAMES TROIANO, (01))	
)	
Defendant.)	
)	
)	
)	

MEMORANDUM OF LAW IN SUPPORT OF MOTION

Defendant James Troiano (Troiano) asserts that counts 3 and 4 of the Superseding Indictment filed on October 5, 2005 should be dismissed because of an irregularity relating to the serial number of a Colt .45 pistol in each of those counts.

Counts 3 and 4 of the superseding indictment contain hand-written inclusions regarding the serial number of a firearm. See Exhibit "A". Specifically, the letter "O" (or the number "0") is written after the letter "W" in detailing the serial number of a Colt .45 pistol. There is another hand-written notation on the indictment which appears to be the initials of Assistant United States Attorney Clare E. Connors.

As present counsel is Troiano's third attorney, it is not known whether pursuant to FRCP Rule 7(e), the court permitted amendment of the indictment at an

earlier proceeding.¹ If the court did not permit the amendment, then issues relating to the propriety of the hand-written notations must be explored. For instance, were the notations made at the grand jury proceedings with the full knowledge of the grand jury? Or were the notations to the superceding indictment made by the Assistant United States Attorney after the grand jury returned the indictment and without any court-ordered amendment? Under the second scenario, serious questions pertaining to the grand jury process and Troiano's due process rights are implicated.

For the foregoing reasons, Troiano requests that this Honorable Court conduct an inquiry in the matter, and dismiss counts 3 and 4 of the superceding indictment.

DATED: Honolulu, Hawaii, February 27, 2006.

BY: 

TODD EDDINS

¹ The case's minutes do not reflect an amendment, and Troiano does not recall a court ruling on the matter or consent to the amendment. Without any understanding as to what transpired at the grand jury proceedings, it is difficult for Troiano to ascertain the precise nature and circumstances of the "amendment". Given that Troiano may have to rely on the representations of the prosecuting attorney with respect to the instant matter, he requests that the court permit him access to the minutes of the grand jury proceedings and/or any pertinent records or reports relating to the issue.